

## Decentralization process and financial autonomy of local government units in Albania

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### Abstract

The purpose of this paper is to give a general overview on the decentralization process and on the financial autonomy of local government units in Albania. The principal base for the analysis done is the legal framework, accompanied shortly with examples of its implementation in several communes or municipalities. The paper is organised in 3 issues, which treat respectively the organization of local government in Albania, decentralization of functions and responsibilities in favour of the units of local government, and their budget and resources of financing. There has been some difficulties in practice during decentralization process raised out when fulfilling the whole legal framework on exercising exclusive and shared competences of local units of government, because of the dependence by the respective institutions for the implementation of legal acts for exclusive and shared functions in the fields of education, economic support and health care, and by lack of funds of the responsible ministry to transfer the service of water supply. In Albania seems yet early to give right importance to regions, and especially with regard to the aspirations for European integration many challenges raise to the Albanian institutions.

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## **Introduction**

The first constitutional regulations after the democratic changes in Albania in the years '90 preview shortly some general principles of local governance without giving any further details, leaving other things to be regulated by law. It should be noted here that the Albanian constitutional law nr.7491, date 29.04.1991 "On the main constitutional dispositions" – this law was meant to be temporary, which rises indirectly from the dispositions of the law itself when stating that the dispositions of this law will be in force "Till approval of the Constitution of the Republic of Albania, which project will be prepared by an ad-hoc commission charged by the Parliament" – was further reviewed in 1992 by adding a supplement titled "On the organization and functioning of the local government", which contained main principles of local governance, and was further implemented with respective laws. Since then, clarifying the functions and the competences of the units of local governance, and transferring them from the central government to the local one, has been one of the main issues in the framework of the decentralizing process in Albania; meanwhile the actual sources of law concerning decentralization and financial autonomy of local governments are:

- The Albanian Constitution of 1998.
- The European Charter of Local Self-Government – a document elaborated in the framework of the Council of Europe and ratified by the Albanian Parliament with the law nr.8548, date 11.11.1999.
- The law nr.8652, date 31.7.2000 "On the organization and functioning of local government" revised with the law nr.9208, date 18.03.2004.

## **The organization of local government in Albania.**

Organization and functioning of local government in Albania is done in conformity with the principles of decentralization and local autonomy, which are proclaimed by art.13 of the Albanian Constitution (which states "*Local government in Albania is created in base of the principle of decentralization and exercised in accordance with the principle of local government autonomy*")., by so distinguishing that "decentralization" and "local autonomy" are different

concepts. Other related principles are those stated in Part 6 of our Constitution “Local government”, in the European Charter of Local Self-Government (ECLSG here in after), and the above mentioned law “On the organization and functioning of local government”. Decentralization, in a general context, is determined as a transfer of assets and functions of governing and administering from central level to local level. This transfer includes power, authority, functions, resources and responsibilities. The shapes, in which decentralization appears, are deconcentration, transfer and delegation (DOBJANI E., 2007, p.203-204. The author here gives also definitions of deconcentration, transfer and delegation, such as following: *deconcentration* is a transfer of resources, responsibilities and authorities within a central institution or administration; *transfer* is the most radical form (or shape) of decentralization, which is related to the existence of legal local levels of governing, and transfers the responsibility and ability from central institutions to local ones, that are independent by the legal or constitutional point of view; *delegation* is form of decentralization that sends the responsibility and authority of accomplishing certain functions in public or half-autonomous agencies or institutions placed on local level). The decentralization of functions and responsibilities in favour of local government is treated below in the second issue of this paper.

The concept of local autonomy, as defined in art.3 of ECLSG, is understood as the right and the ability of local authorities to regulate and manage, within the limits of law, a substantial share of public affairs under their own responsibilities and in the interest of local population. This right is exercised by local councils or assemblies, which may possess executive organs responsible to them. The notion of “ability” expresses the idea that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively; meanwhile the expression “under their own responsibility” stresses that local authorities should not be limited to merely acting as agents of higher authorities. In reality most affairs have both local and national implications and responsibility for them. To limit local authorities to matters which do not have wider implications would risk relegating them to a marginal role, while the intention of the Charter itself is that local authorities

should have a broad range of responsibilities which are capable of being carried out at local level (Council of Europe, 2010, “European Charter of Local Self-Government and explanatory report,, p.34-35). The concept of autonomy may be accounted for mainly three: a) *normative autonomy* understood as “power attributed to bodies different from the state, in a state legal systems, to adopt rules of the same legal system”; in this sense communes, municipalities and regions are “autonomous bodies”, although they’re not the only subjects dotted with normative autonomy (lets remind here for example unions); b) *organizing autonomy*, characterizing the legal situation of proper independence of some type of entity compared with other homogenous entities, in the sense that the first ones enjoy a juridical order partially different from that to which are subject the second ones (lets think here on the autonomy of universities); c) *political autonomy*, understood as a power of some bodies to give itself a political policy different from that of the state. As to *financial autonomy*, it doesn’t constitute a single characteristic, but indicates a quality of organizing autonomy, meaning the (relative) self-sufficiency of some subjects regarding the provision of financial resources necessary to carry out their activities (Martines, 2005, pp.639-640): for example art.111 /2 of the Albanian Constitution previews that local government units have independent budget, for which creation is given sufficient authority to the them by law. On their financial sources there’s further treatment in the third issue of this paper.

The mission of local government in Albania, as previewed in art.3 of the law “On the organization and functioning of local government” – which by the way is in compliance with art.4 of ECLSG, – is to provide governance at a level nearer to the citizens by means of: acknowledgment of the existence of different identities and values of the communities; respect of main citizen’s human rights and liberties stated in the Constitution or other laws; choosing different sort of services and other local public facilities to the good of the community; effective exercise of functions, competences and realization of duties by the organs of local government; realization of appropriate services; effective egging of community participation in local government. The system of the administrative authorities of local governments is created and acts in base of the administrative

territorial division of the state, which according to art.108 /2 of the Albanian Constitution defines that “The administrative territorial divisions of the units of local government are determined by law on base of economic common needs and interests, and historical tradition. Their limits could not be changed without having the consent of the population that lives there.”

Units of local government in Albania are communes, municipalities, regions and respective subdivisions. Art.108 /1 of the Albanian Constitution contain a legal reserve for the further creation of new units of administrative territorial division. An example here can be given by the administrative territorial organization of the Municipality of Tirana, where by special law were created the Municipality Units of Tirana, which constitute separate territories within Tirana. They have representative and executive organs with limited service competences without ruining the unique character of Tirana Municipality. This division has created the conditions for building: appropriate organs for the local government to the good of respective communities, local democracy and the realization of the decentralization reform. Meanwhile, administrative division is still flexible and can be changed. Changes can be done to the good of the specific zone’s development, in compliance with the national programs of development, with acceptable arguments, and also with a procedure that guarantees the taking of opinion by the inhabitants and their representative organs (“Main principles of the organization and functioning of local government”, 2004, p.4-5). The decentralization process in the concrete conditions of Albania asks that the needed procedures and acts for the transfer of competences and functions should also be made by perseverant expression by the units of local government themselves. In accordance with the Constitution (art.108) and the above-mentioned law “On the organization and functioning of local government” (art.5), the local government operates in two levels:

a) *Basic units of local government*, which are: communes and municipalities.

b) *Second level units of local government*, which are: regions.

a) The administrative territorial division of the Republic of Albania has 309 *communes* and 65 *municipalities*.

The commune represents a territorial administrative unit by rule in rural areas and in particular cases in urban areas also; meanwhile the municipality represents a territorial administrative unit mainly in urban areas and in particular cases include also rural areas – these are the definitions given by art.5 /2,3 of the Albanian law “On the organization and functioning of local government”. By them we can simply understand that the commune includes some villages; meanwhile the municipality is created principally on city base. Subdivision of the commune is the village or, in rare cases, the city; subdivision of the municipality in urban areas is the quarter, but it can be also the village when the municipality includes rural areas. According to Albanian legislation quarters are created by decision of municipality council in a territory with more than 15.000 inhabitants, and villages are created in a territory with more than 200 inhabitants. Essentially, there is no difference in the governing role between municipalities and communes. In each commune and municipality there are representative and executive organs of local governing, which are appointed by general, direct and hidden elections every 4 years. Representative organ is the respective council (communal and municipal council - the number of councilors, as previewed in art.24 of the law “On the organization and functioning of local government”, is appointed by the prefect for each commune and municipality under his jurisdiction, in base of the number of inhabitants according to the evidences of civil offices of 1 January of the year in which elections are held. Art.24 also sets the number of councilors in proportion to the number of inhabitants in each commune or municipality), while executive organ is the Mayor. The Mayor exercises all the competences in accomplishing the functions of the commune or municipality, except those that are mere competence of the respective council. A general overview on the functions of communes and municipalities is given in the following issue of this paper.

b) The territorial administrative division of Albania is actually composed of 12 *regions*. The region is an administrative-territorial unit that is composed of several communes and municipalities with geographical, traditional, economical, social connections and joint interests (art.5 /5 of the Law “On organization and functioning of the local government”). Subdivision of the region is the district. Representative organ of region is the Council of Region, which is not directly

elected, but is created by representatives of the elected organs of the communes and municipalities, from which it's composed, in proportion to their population. Mayors of these communes and municipalities are always members of the council of region, the other members are appointed from among the councilors of communes and municipalities; in cases when there is only one representative, this is directly done by the mayor. Executive functions in region are performed by the Chairman and the Leadership of the Council of Region. Under the provisions of art.58 of this law, Leadership of the Council of District consists of chairman, vice-chairman and from 5 to 9 other members. Chairman and vice-chairman are individually elected and discharged by majority vote of members present at the meeting, while other members are elected by vote with multi-name list of candidates and winning candidates are announced the ones who received more votes. The role of region, as stated in art.13 of the above-mentioned law, consists in creating and developing regional politics and in coordinating them with central government politics. Region exercises also all the functions to it delegated by one or more communes and municipalities within its territory, according to deals among them. In practice the role of region is not yet effectively enacted, because its functions are related to the awareness of communes and municipalities to delegate functions to it, which awareness is still low and they don't yet understand the effectiveness of sharing and delegating competences, especially in the future integration of Albania in European Union, which's connection with countries and applicability of action plans is done principally in region, and many challenges raise to the Albanian institutions. In fact, except representation of common interests of communes and municipalities, absorption of financial funds from the EU is presented as additional reason on the importance of the region. In Albania seems yet early to give right importance to regions, and increased funding for them has begun in 2005-2006. It's important to stress that the role of region is not further deepened on, and it's not clearly defined, because of "mixed" actions and competences with the prefecture, the municipalities and the communes, which can bring to conflicts between respective authorities. The representative of the Council of Ministers in the region is the Prefect, as stated in art. 114 /1 of the Constitution, and his competences

are regulated by the law nr.8927, date 25.07.2002 “On the prefect”, among which we can mention: to control and coordinate the activity of central institutions in regional level, and to coordinate their activity with the organs of local government units. There is no subordinate relation between the prefect and the organs of local government; meanwhile the prefect does the verification of lawfulness of normative acts approved by the local government authorities in communes, municipalities and regions. He also exercises the financial control on these organs in the way and limits stated by law for the part of their funds, which was released by the central government.

### **Decentralization of functions and responsibilities in favour of local government**

The decentralization process, clarifying the functions and competences of local authorities, and their transfer from central to local level is still one of the main challenges faced by local authorities. The Strategy on decentralization and local self-governing, based on the standards determined by the Albanian Constitution, ECLSG and the law “On the organization and functioning of local government”, paid special attention to the decentralization and transfer of functions in harmony with the fulfillment of necessary demands with the objectives for this transfer to be successful in order to bring a more effective governing. The classifying of functions of local authorities was defined for the first time with the law “On the organization and functioning of local government”, art.9, such as follows:

- a) *exclusive/own functions*,
- b) *shared functions*,
- c) *delegate functions*.

a) The determination of *exclusive functions* is more explicit for local authorities of basic units (commune and municipality), which are responsible for their realization and have the freedom and the authority to decide and use the resources for their fulfilment. In this aspect, according to art.10 of the law “On the organization and functioning of local government”, exclusive functions of the commune and the municipality are: i) in the field of infrastructure and public



services: water supply, construction and reconstruction of local roads, sidewalks and public places, lighting public environments, urban public transport, etc. Those are explicitly defined by law; *ii*) services with social, cultural and sportive character: saving and developing local cultural and historical values, organization of sportive activities, social service and administration of respective institutions, such as crèches, asylums, orphanage, etc; *iii*) local economic development: preparing action plans of local economic development, building and functioning of public markets, development of small businesses and inciting activities such as fairs and advertisements in public places, organization of services in order to support local economic development such as information, structure and necessary infrastructure, veterinary service, safeguarding and developing the forests, pastures and other natural resources of local character; *iv*) order and civil protection: safeguarding public order to preview administrative violations and guarantying fulfilment of the acts of commune and municipality, and also civil protection.

There are yet obstacles and difficulties that impede the decentralization of own functions of local authorities. Those obstacles are more of subjective reasons, such as: lack of will by certain central ministries or institutions to issue their control over some functions and investments; lack of the initiative for decentralization by local authorities themselves or lack of capacities and abilities, especially in certain communes (DOBJANI E., 2007, p.211).

*b) Shared functions of the commune and of the municipality* include those areas and sectors where are involved both local and higher level authorities. As such shared functions are those for which the unit of local government has its part of responsibility, distinctive from the part of the responsibilities given by the central government, and that is proportionally accompanied with competences that it can exercise autonomously, for example health is a central government competence, but local government is responsible for the maintenance of the facilities of health centres. In any case the competences of the organs of local government for this sort of functions are determined by law. Shared functions include: compulsory and secondary education, the system of primary health services and protection of

public health, social assistance and poverty, public order and civil protection, and also other common functions, as determined by law.

There has been some difficulties in practice during implementation of the law “On the organization and functioning of local government”, such as defined also in the Strategic Plan of Decentralization. Those problems raised out when fulfilling the whole legal framework on exercising exclusive and shared competences, because of the dependence by the respective institutions for the implementation of legal acts for exclusive and shared functions in the fields of education, economic support and health care, the lack of funds by the responsible ministry to transfer the service of water supply, and in some cases the lack of local administrative and technical capacities to fulfil the competences of the units of local government. The Ministry of Finances, in order to incite local self-governing and access of the units of local government in the capital markets, has created a working group in collaboration with the units of local government with the aim to separate competences of municipality units for public markets, sweeping of urban zones, greening the secondary roads in the framework of the implementation of decentralization process. Meanwhile in collaboration with the Municipalities of Fier and Elbasan it has been drafted the Urban Strategic Plan of those cities in order to realise the sharing of competences and mostly its own competences for the planning of urban land and its management (The Albanian Strategy of Decentralization and Local Autonomy, 2005, p.51-57).

c) *Delegate functions of the communes and the municipalities* are regulated by art.12 of the law “On the organization and functioning of local government”; they include functions of central government or other central institutions that by law or by agreement, are determined to be realised by the units of local government in the ways and measures defined by the central government or the other central institutions. Delegate functions and competences can be compulsory or non-compulsory. As for the compulsory ones, they are determined only by law, can be done only for certain competences and in this case the responsible central institution authorises the organ of local government to exercise the function determining the procedure of execution and to control implementation. The non-compulsory delegate functions are those which are not delegated by law, but in

accordance with an agreement of collaboration between the central institutions and the units of local government. Delegation in this case can be extended also in all or in certain units of local government. Actually as delegate functions can be mentioned: distribution of economic assistance for the families in need, the activity of local government authorities regarding the service of civil state, the fulfilment of obligatory military service, etc.

The law "On the organization and functioning of local government" also regulates *the functions of region*, which according to art.13 are: a) *exclusive/own functions*, such as building and implementing regional politics and their harmonisation with national ones in regional level, and every other function defined by law; b) *delegate functions*, by central government or by one or more communes and municipalities within its territory, according to an existing agreement between them.

### **The budget of the local government units and their resources of financing**

The budgetary system in Albania, according to art.157 of the Albanian Constitution, is composed of the state budget and the local budgets. The state budget is created by the sources collected from taxes, tariffs, other financial obligations and lawful resources, and it includes also all the state expenditures. The units of local government settle and collect local taxes and other fees defined by law. Imposts, taxes and other national and local fees decreasing or excluding certain categories of subjects and the way of their collection are determined by law, to which in such cases, according to art.155 of the Constitution, can not be given retroactive force.

During the year 2002 it has been established a legal package for the fiscal decentralization in order to ensure a wider base for the realization of local incomes and for a more effective fiscal politic. An actual structure for the realization of the decentralization reform is the Directory of Decentralization and Prefectures, which mission is to pursue and to realize the reform of fiscal decentralization for the public services in the sectors of: education, health, transport, transferring properties to the units of local government, social help to the families in need, economic local development, and to elaborate programmes

for the regional social and economic development (The Albanian Strategy of Decentralization and Local Autonomy, 2005, p.58-60).

The principles of financing of local government units, according to art.15 of the law “On the organization and functioning of local government”, are: the principle of the diversity of resources of incomes; guarantees given by law to the units of local government on having sufficient authority to create incomes in an independent way; provision of necessary funds to the units of local government by central government for the fulfilment of delegate functions and competences; the right of the units of local government to elaborate, implement and manage their own budget in compliance with the law “On elaborating and implementing the state budget in the Republic of Albania”.

The law “On the organization and functioning of local government” gives also a detailed description of the resources of financing of the units of local government in Albania. According to art.16-17 of this law, *the resources of incomes of the communes and municipalities* include incomes from its own resources and incomes from national resources. Communes and municipalities create their own resources by: local taxes and fees on movable and immovable property, transactions made on them, and on economic activities of small business; local tariffs on public services they offer, the right to use local public properties and the granting of licenses, permits and authorizations, for which they have full authority; other local taxes and fees determined by law. *The resources of financing of regions*, according to the art.18 of the same law include its own local resources and, also, resources from the distribution by national incomes. Own resources of region consist of: unconditioned transfers, including the quotas of participation of the constituent communes and municipalities; conditioned transfers for the accomplishment of delegate functions and competences from the constituent communes and the municipalities; fees and tariffs settled on region level; tariffs for the public services offered by the region itself.

Each unit of local government enjoys full authority on purposes and ways of using its own financial resources that are unconditioned transfers. Conditioned transfers that are done part of the budget of local government unit should be used only for the purpose for which they are given in compliance with the rules

appointed by central government. The tax legislation framework in regional level contains: local taxes and fees determined by the law on local tax system, and also related bylaws approved by local administration. According to article 9 of the Law nr.9632, date 30.10.2006 "On local tax system", amended, local taxes include: local tax on small business, taxes on immovable property – this tax includes the tax for buildings and the tax for agricultural land, – the tax of accommodation hotel, the tax of impact in infrastructure of new buildings, tax on the transfer of ownership right to real estate, annual registration tax of vehicles, tax for occupation of public spaces, table tax, and also temporary taxes.

Units of local government in Albania are entitled of property rights and economic rights as well (as defined in art.8 of the law "On the organization and functioning of local government"). Their financial autonomy is generally improved, because of following measures: a) real improvement of the structure of its own financial resources and decision-making capability (this can be seen by the transfer of some tariffs from national to local level, as for example the transfer of collecting "the small business income tax" from the Tax Administration to the Municipalities themselves since 2007); b) the clear determination of the right of local councils to decide the level of tariffs in compliance with the development politics and the economic social state of the unit itself (except the possibility to increase or decrease the level of the tariffs in proportion to the legal level, the local councils have also the right not to apply those tariffs or to exclude certain subjects, even temporally); c) it has been adopted a legal package concerning fiscal decentralization, especially there has been taken many measures to increase financial autonomy of local government units. There's also growth of the budget of local governments, especially the part of internal resources, seen in proportion to the incomes transferred by the central government and the conditioned budget. Otherwise the empirical manner on distributing funds of the state budget, last years has been applied a sort of formula to distribute incomes, in base of some sort of indexes that directly affect in the rapport of functions that local government units exercise in the community. Those changes have been realized through widening of local tariffs system, their improvement, and increase of the range of engagement of the units of local government with their financial

problems ("Main principles of the organization and functioning of local government", 2004, p.20-22). In base of some analysis done in Shkodra Region it's shown that the indicators of democracy are in favour of small communes, but the indicators of efficiency mainly favour large ones. Experiences related to territorial reorganization and debates for merging or dividing communes show that there is no recipe to be followed or applied in each situation, but it will help the capacity building of local units and it may be seen as an alternative strategy for the growth of efficiency of decentralization. In the case of merging of Bushat Commune with Barbullush Commune – based on law no.9123, date 07.02.2003, Bushat and Barbullush Communes (within territorial administrative division of Shkodra Region and population respectively of 17.400 and 5.100 inhabitants) were merged in one unique unit called the Commune of Bushat, with its headquarters in Bushat village – there was: a quality increase in the commune administration, investments increase; per capita incomes increase; decrease of Barbullush administrative expenses, hence more efficiency; meaningful improvements of the quality and quantity of public services (HILA T., SOKOLI J., paper in "Capacity building through research partnership – a case study on decentralization and governance in northern Albania", 2007, p.28). Also by analyzing the 2006-2010<sup>th</sup> fiscal packages of Shkodra Municipality, we can see that during these years there are no changes for the rate of local taxes, meanwhile there's a little tendency in increasing the fees. The increase of fees every year could be justified with the higher expenses in offering the service, for which the fee is paid. It should also be mentioned here the difficulties of the municipality to collect its own incomes, related to certain fees such as: cleaning fee, lighting fee, etc., because of the low legal awareness of the community to pay these fees. Still, financial autonomy of local government units remains big challenge for the local authorities and central ones in Albania.

## **Conclusion**

- Organization and functioning of the units of local government in Albania is done in conformity with the principles stated in the Albanian Constitution, the European Charter on Local Self Government, and the Albanian law “On the organization and functioning of local government”.
- In practice the role of region is not yet effectively enacted, because its functions are related to the awareness of communes and municipalities to delegate functions to it, which awareness is still low and they don't yet understand the effectiveness of sharing and delegating competences, especially in the future European integration of Albania.
- There has been some difficulties in practice during implementation of the law “On the organization and functioning of local government” raised out when fulfilling the whole legal framework on exercising exclusive and shared competences, because of the dependence by the respective institutions for the implementation of legal acts for exclusive and shared functions in the fields of education, economic support and health care, and by lack of funds of the responsible ministry to transfer the service of water supply.
- Units of local government in Albania enjoy financial autonomy to the extent that they are allowed to set several local taxes and fees.

Generally indicators of democracy are in favour of small communes, but indicators of efficiency mainly favour large ones. Experiences related to territorial reorganization and debates for merging or dividing communes show that there is no recipe to be followed or applied in each situation, but it will help the capacity building of local units and it may be seen as an alternative strategy for the growth of efficiency of decentralization.

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